that effect; the duty of inspection being an incident to the duty of maintaining the wire.

[Ed. Note.—For other cases, see 15 Va.-W. Va. Enc. Dig. 661.]

3. Master and Servant (§ 125 (1)*)—Injuries to Servant—Duty of Master.—It is the duty of a mine operator to use reasonable care to make a fallen electric wire reasonably safe, after it knew, or by ordinary care might have known, of the defect.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 680.]

4. Master and Servant (§ 265 (14)*)—Injuries to Servant—Contributory Negligence—Burden of Proof.—The burden of proving contributory negligence is on the master, unless the servant's own negligence establishes it.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 723.]

Error to Circuit Court, Wise County.

Action by Asa Prophet's administrator, against the Virginia Iron, Coal & Coke Company. There was a judgment for plaintiff, and defendant brings error. Affirmed.

Bullitt & Chalkley, of Big Stone Gap, and *Jackson & Henson,* of Roanoke, for plaintiff in error.

Bond & Bruce and *Fulton & Vicars,* all of Wise, for defendant in error.

WADKINS *v.* DAMASCUS LUMBER CO.

Sept. 20, 1917.

[93 S. E. 591.]

1. Appeal and Error (§ 839 (2)*)—Review—Successive Trials.—It is the rule that, where there have been two trials, the appellate court must look first to the evidence and proceedings on the first trial.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 578.]

2. Appeal and Error (§ 839 (2)*)—Review—Successive Trials.—Where evidence upon each of two trials was identical, the latter verdict being the larger, evidence on the second trial alone will be considered on plaintiff's appeal, where defendant's demurrer to evidence was sustained, since, if there was no error to plaintiff's prejudice on the second trial, there could have been none on the first, and it was immaterial that there was a view of the premises by the jury on the first trial, and not on the second.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 578.]

3. Appeal and Error (§ 997 (2)*)—Review—Demurrer to Evidence.—Plaintiff's position being more favorable upon a demurrer to evi-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

dence than upon a motion to set aside a verdict, the appellate court will only consider the action of the court upon the demurrer to evidence.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 576, 578.]

4. Master and Servant (§ 101, 102 (5)*)—Servant's Injury—Machinery—Custom and Usage.—An employer was not liable for his experienced servant's injury, sustained while tarring machinery, where machinery conformed to that in general use in similar plants, and the danger was incident to the work itself, rather than the failure to supply a safe place to work.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 674, 680.]

5. Master and Servant (§ 101, 102 (2)*)—Servant's Injury—Liability of Master in General.—Employers are not insurers of their employes safety, and are liable for the consequences, not of danger, but of negligence.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 674, 675.]

6. Master and Servant (§ 278 (20)*)—Servant's Injury—Duty to Warn—Sufficiency of Evidence.—Evidence held insufficient to show employer's duty to warn an experienced employee as to danger of tarring machinery; employee not having been directed to tar, but to oil, the machinery, and employee being aware of sticky quality of tar in cold weather, and dangerous character of machinery itself being perfectly obvious.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 725.]

7. Master and Servant (§ 88 (4)*)—Servant's Injury—Volunteers.—An employee, injured while tarring machinery, had no legal cause of complaint, where he was only directed to oil machinery.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 668.]

Error to Circuit Court, Washington County.

Action by John A. Wadkins against the Damascus Lumber Company. Judgment for defendant on demurrer to evidence, and plaintiff brings error. Affirmed.

L. P. Summers, of Abingdon, for plaintiff in error.

Hutton & Hutton and *White, Penn & Penn,* all of Abingdon, for defendant in error.

RINER *v.* LESTER.

Sept. 20, 1917.

[93 S. E. 594.]

1. Vendor and Purchaser (§ 166*)—Delivery and Acceptance—Effect.—If there was a valid delivery and acceptance of deed from

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.